

MEMORY and RECONCILIATION – The Role of the Human Rights

1. International human rights developments

Human rights have increasingly become the language of our time as it frames and provides the foundational principles for a diverse range of challenges that face the global community. These include international relations and global governance, human development, climate change and now the global financial crisis. Of course it has not come without controversy as powerful states have sometimes used the discourse to validate the use of non defensive force while in truth pursuing their own strategic interests. On the other hand there has been increased reliance on the discourse by oppressed groups and many movements in the developing world as they seek to break the hegemony of power. However the outcomes of those contestations are for now by and large determined by the locus of power. In this regard Richard Falk of Princeton University observes that “the power of rights, although a much more potent reality than would have seemed likely a century ago, is still no match for the rights of power ...”¹

The adoption of the Universal Declaration of Human Rights in Paris in December 1948 was a watershed event in the development of the modern human rights movement even though at the time much of the developing world was under the yoke of colonialism and, racial and gender discrimination was largely institutionalized prompting some to call it a Declaration for the developed world. Nonetheless the vision of the UN Charter of a society based on “social progress and better standards of life in larger freedom”² and the recognition in the Universal Declaration of the inherent worth and dignity of each person continues to resonate strongly across economic, racial, cultural and religious divides and provides a common rallying point for advancing social justice and human development.

¹ R Falk *Achieving human rights* (2008) 25.

² Preamble of the UN Charter.

2. National political developments and the struggle against apartheid

As the world began its engagement with human rights, in South Africa the beginning of a new and dark chapter in our history was imminent – one that stood in stark contrast and defiance with the principles of equality and human dignity espoused in the Universal Declaration. The years after 1948 would see the growth and consolidation of grand apartheid and the manner in which it ultimately came to exert total and uncompromising control of virtually all aspects of life in South Africa – the political, economic, social and indeed the personal all premised on a hierarchy of humanity with Whites at the top and Africans at the bottom with Indians and Coloureds in between.³ The system extracted an unquantifiable cost on millions – its excesses ranged from killings, disappearances and torture to the dispossession of and theft of land and livelihoods. It destroyed individuals, families and communities. It left in its wake a nation deeply scarred and traumatized.

The brutality and the moral bankruptcy of apartheid saw the further growth and maturity of a liberation struggle that was able to unite within its family a broad and diverse cross section of society and of national and international actors. The struggle for the liberation of South Africa and against apartheid was more than simply a struggle to replace a dictatorial minority government with one that was elected in accordance with the principles of democracy. At its very core it was struggle to create a new society underpinned by a set of values that were premised on the recognition of the equal worth

³ On the apartheid legal order see eg J Dugard *Human rights and the South African legal order* (1978). Discriminatory legislation included the Natives Land Act, No 27 of 1913, the Natives (Urban Areas) Act of 1923, Prohibition of Mixed Marriages Act, Act No 55 of 1949, Immorality Amendment Act, Act No 21 of 1950; amended in 1957 (Act 23), Population Registration Act, Act No 30 of 1950, Group Areas Act, Act No 41 of 1950, Suppression of Communism Act, Act No 44 of 1950, Bantu Building Workers Act, Act No 27 of 1951, Separate Representation of Voters Act, Act No 46 of 1951, Prevention of Illegal Squatting Act, Act No 52 of 1951, Bantu Authorities Act, Act No 68 of 1951, Natives Laws Amendment Act of 1952, Natives (Abolition of Passes and Co-ordination of Documents) Act, Act No 67 of 1952, Native Labour (Settlement of Disputes) Act of 1953, Bantu Education Act, Act No 47 of 1953, Reservation of Separate Amenities Act, Act No 49 of 1953, Natives Resettlement Act, Act No 19 of 1954, Group Areas Development Act, Act No 69 of 1955, Natives (Prohibition of Interdicts) Act, Act No 64 of 1956, Bantu Investment Corporation Act, Act No 34 of 1959, Extension of University Education Act, Act 45 of 1959, Promotion of Bantu Self-Government Act, Act No 46 of 1959, Coloured Persons Communal Reserves Act, Act No 3 of 1961, Preservation of Coloured Areas Act, Act No 31 of 1961, Urban Bantu Councils Act, Act No 79 of 1961, Terrorism Act of 1967, Bantu Homelands Citizens Act of 1970.

and dignity of each person. It was substantially a human rights struggle in the widest sense of the term – one that recognised that human rights were more than a set of entitlements enforceable against the state but rather that human rights constituted a value system and the basis through which we could rebuild a society in pursuit of social justice. In many respects this powerful human rights imperative found resonance with millions across the world who could relate it to their own suffering, their own triumph or simply their sense of humanity. The unprecedented solidarity that emerged from both known but in many instances unknown and unheralded corners of the earth for our struggle may well have had its roots in the simple but powerful manner in which human rights were able to connect otherwise different and diverse people .

3. The role and place of human rights in the post apartheid era

Given the nature of our struggle and the centrality of human rights as an important unifying factor and a key pillar of the post apartheid society that was envisaged, it was evident that human rights would feature quite prominently in the birth of a new society and in the building of that society.

The ANC in its statement on negotiations in October 1987 stated:⁴

“To end apartheid means, among other things, to define and treat all our people as equal citizens of our country, without regard to race, colour or ethnicity. To guarantee this, the ANC accepts that a new constitution for South Africa could include an entrenched Bill of Rights to safeguard the rights of the individual. We are, however, opposed to any attempt to perpetuate the apartheid system by advancing the concept of so-called group and minority rights.”

In his speech before Parliament on 2 February 1990, then President de Klerk declared that:⁵

⁴ <http://www.anc.org.za/ancdocs/pr/1980s/pr871009.html> (accessed 24 March 2009).

⁵ Address by the State president Mr FW De Klerk, DMS, at the opening of the second session of the ninth parliament of the Republic of South Africa Cape Town, 2 February 1990, available at http://www.fwdklerk.org.za/download_archive/90_02_02_Parliament_A_PDF.pdf (accessed 24 March 2009).

“... the government will accord the process of negotiation the highest priority. The aim is a totally new and just constitutional dispensation in which every inhabitant will enjoy equal rights, treatment and opportunity in every sphere of endeavour – constitutional, social, and economic ... it is clear that a system for the protection of the rights of individuals, minorities and national entities has to form a well-rounded and balanced whole. South Africa has its own national composition and our constitutional dispensation has to take this into account.”

The difference in approach was already evident back then and even though in the end minority or group rights were limited to cultural, religious and linguistic rights,⁶ the preoccupation with minorities has continued well beyond the parameters of the Constitution.

The context within which the birth of a new society was to take place was a negotiated settlement and the relatively peaceful transition of political power coupled with many agreements regarded at the time as critical to reconciliation and political stability (land, employment, prosecutions etc). At the same time a new constitutional and legal order was born that placed rights at its centre and certainly promised the delivery of the rest of the package beyond the political.

The political compromise that heralded the end of legal apartheid created its own constraints. One of the most daunting challenges was how we would (if it was ever possible) reconcile the outcomes of the political negotiations which resulted in far reaching agreements on amnesty, the absence of criminal and civil accountability and in many instances the retention of the status quo with on the other hand universally accepted principles of accountability and redress for the victims of human rights violations as well as the transformative and re-distributive requirements of the new constitutional order. What would be the impact of having two parallel human rights systems in place working simultaneously – one dealing with the past the other with the present – both founded on different rules and both yielding considerably different outcomes.

⁶ See ss 30 & 31 of the 1996 Constitution.

The rights discourse would have to respond to the past, shape the present and provide promise for the future. The language and the potential power of rights was widely accepted at the time and indeed there was almost a universal willingness to embrace its healing and redeeming powers perhaps in part because we wanted so much for it to work and if it did it would affirm our status as the wonderful rainbow nation – able to overcome the most formidable of obstacles. There was considerable expectation that the rights discourse would be central in responding to these multiple challenges. In broad terms human rights would have to feature in the remedial, the transformative as well as the redistributive processes that dealing with our past and building our future would entail. The remedial would essentially be related to how we deal with the past and the litany of human rights violations that characterized it – to ensure that there was accountability and redress; the transformative was how we would lay the building blocks of a new society in both creating new institutions, policies and programs as well as rehabilitating old ones while the redistributive would require us outside the constraints of the remedial process to ensure that the notion “that South Africa belongs to all who live in it” would be given content.

4. The TRC model

The interim Constitution laid the foundation for a constitutional era which by necessity had to find a way of dealing with the past. The epilogue to the interim Constitution stated that “[t]he adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights”. The epilogue further set out that in order to advance reconciliation and reconstruction amnesty should be granted for “acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past.” The apartheid system, internationally recognized since the 1970’s as a crime against humanity,⁷ was not mentioned by name.

⁷ The International Convention on the Suppression and Punishment of Apartheid was adopted by the UN General Assembly in November 1973 and entered into force in July 1976. The convention gives a long definition of the crime of apartheid which includes among others the following (art II): ‘Any legislative measures and other

The Truth and Reconciliation Commission (TRC) was established with the objective to “to promote national unity and reconciliation” by “establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights” committed during apartheid, facilitating amnesty for perpetrators of such gross violations, making known the fate of victims, letting victims present their stories and recommending reparations to victims.⁸

Victims were defined as “persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights as a result of a gross violation of human rights.”⁹ Gross human rights violations were defined as “the killing, abduction, torture or severe ill-treatment of any person”.¹⁰ “Gross human rights violations” as defined in the Act were violations against laws which were in force during apartheid. The consequences of apartheid as a system of institutionalised discrimination thus largely fell outside the mandate of the TRC.

Considering the criminal law-centred framework of the TRC with its focus on individual perpetrators and victims it is not surprising that most discussion around the Commission and its outcomes have focused on amnesty and reparations for “gross human rights violations”, as defined in the Act. The TRC did not constitute an adequate basis for

measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups ... Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof.’ Art 1 of the convention declared the crime of apartheid as a crime against humanity. This was reiterated in the Rome Statute on the International Criminal Court which in art 7(1)(j) includes the crime of apartheid as a crime against humanity.

⁸ Promotion of National Unity and Reconciliation Act, 34 of 1995, s 3.

⁹ Promotion of National Unity and Reconciliation Act, s 1(1)(xix).

¹⁰ Promotion of National Unity and Reconciliation Act, s 1(1)(ix).

addressing the past in particular the need for restitution, redistribution and transformation.¹¹

It must however be recognized that the limitations of the focus on “gross human rights violations” are clearly set out in the TRC report and that the Commission undertook some efforts to overcome the limitations of its mandate:¹²

“[I]t needs constantly to be borne in mind that, while the state and other operatives were committing the murders and abductions and other violations documented in this report, a much larger pattern of human rights violations was unfolding. These may not have been ‘gross’ as defined by the Act, but they were, nonetheless, an assault on the rights and dignity of millions of South Africans and they were, in large part, the product of the core legislation, and subsequent amendments ... while only some 21 300 persons filed gross human rights violations petitions with the Commission, apartheid was a grim daily reality for every black South African. For at least 3.5 million black South Africans it meant collective expulsions, forced migration, bulldozing, gutting or seizure of homes, the mandatory carrying of passes, forced removals into rural ghettos and increased poverty and desperation. Dumped in the ‘national states’ without jobs, communities experienced powerlessness, vulnerability, fear and injustice.”

As part of the TRC process there were institutional hearings with regard to business and labour, the faith community, the legal community, the health sector, the media, prisons, compulsory military service and special hearings with regard to children and youth, and women.¹³

The TRC model was a compromise which did not come without significant objection. In *AZAPO*¹⁴ the provisions of the TRC Act came under scrutiny as a challenge was brought arguing that the Act was unconstitutional in the main in that it denied to victims of human

¹¹ See eg Tshepo Madlingozi ‘Good victim, bad victim: Apartheid’s beneficiaries, victims and the struggle for social justice’ in Wessel le Roux and Karin van Marle (eds) *Law, memory and the legacy of apartheid: Ten years after AZAPO v President of South Africa* (2007).

¹² TRC report, vol 1, ch 2, paras 43, 45.

¹³ TRC report, vol 4.

¹⁴ *Azanian Peoples Organisation (AZAPO) and Others v President of the Republic of South Africa and Others* (CCT17/96) [1996] ZACC 16; 1996 (8) BCLR 1015; 1996 (4) SA 672 (25 July 1996).

rights violations the right to access to justice. In dismissing the challenge Mohamed DP said:¹⁵

“Every decent human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty immune from constitutional attack, but the circumstances in support of this course require carefully to be appreciated.”

The discomfort that is referred to still exists and may have been exacerbated by the manner in which those perpetrators have not only held on to their privileges but qualified for new ones from the democratic state while many victims still languish in poverty.

In dealing with the *quid pro quo* that became known as reparations he went further to state that:¹⁶

“The election made by the makers of the Constitution was to permit Parliament to favour ‘the reconstruction of society’ involving in the process a wider concept of ‘reparation’, which would allow the state to take into account the competing claims on its resources but, at the same time, to have regard to the ‘untold suffering’ of individuals and families whose fundamental human rights had been invaded during the conflict of the past. In some cases such a family may best be assisted by a reparation which allows the young in this family to maximize their potential through bursaries and scholarships; in other cases the most effective reparation might take the form of occupational training and rehabilitation; in still other cases complex surgical interventions and medical help may be facilitated; still others might need subsidies to prevent eviction from homes they can no longer maintain and in suitable cases the deep grief of the traumatised may most effectively be assuaged by facilitating the erection of a tombstone on the grave of a departed one with a public acknowledgement of his or her valour and nobility. There might have to be a differentiation between the form and quality of the reparations made to two persons who have suffered exactly the same damage in consequence of the same unlawful act but where one person now enjoys lucrative employment from the state and the other lives in penury.”

This expansive sense of reparation and reconstruction contemplated by Mohamed DP has not materialized in any substantial fashion. Beyond a once-off payment,¹⁷ there has been

¹⁵ Para 17.

¹⁶ Para 45.

no sustained programmes that have effectively responded to the expectations created that would have gone some way in providing to victims a sense of justice.

The consequence of the limitation in its mandate was that the transitional justice process dealt in the main with what was illegal during apartheid rather than the illegality of apartheid. Definitional limitations meant that no one had to account for conduct during apartheid other than acts which were criminal in terms of apartheid law and similarly victims would only be considered as such if they suffered as a result of conduct that was criminal during apartheid. Because it was largely criminal law-centred it focused on individual victims and individual perpetrators whereas apartheid was a system of collective benefit. From a rights perspective it was paradoxical in that as we commenced a new rights dispensation that was expansive and bold, we were at the same time dealing with rights violations of the past in narrow and confined ways.

The narrow approach also meant there was no opportunity for the collective beneficiaries of apartheid to meaningfully participate in the TRC processes. One of the most dominant impressions created from the public process of the TRC was that apartheid was largely about rogue policemen and security personnel who acted outside of the law of the day, the collective were easily able to distance themselves from such “criminality” and in fact be critical of it without the need to reflect on their own complicity either active or passive in a system that was designed for their benefit and advancement and which did precisely that.

Simply being White not only became the dominant defining characteristic of the minority collective but it also became the passport to many benefits. Former Chief Justice Arthur Chaskalson described the process as follows:¹⁸

¹⁷ ‘R30 000 grant for apartheid victims, no general amnesty’ *SAPA* 15 April 2003

¹⁸ Address to the Jewish Board of Deputies, 1999, quoted by Thabo Mbeki in his opening speech at the National Conference on Racism, Johannesburg, 30 August 2000, reprinted in ANC daily news briefing, 31 August 2000, available at <http://70.84.171.10/~etools/newsbrief/2000/news0831.txt> (accessed 24 March 2009).

“Then, the dominant defining characteristic of our family, within the broader context of South African society, was not our ethnic or religious origins, but the fact that we were white. Because of that, we were entitled to all the benefits then accorded by law to people who were white. We prospered, as so many of the Jewish community did, not only because of our work, but also because of the opportunities offered to us as whites. We were no longer part of a marginalised group within society; we had become part of a privileged group, and part of a society in which others were subjected on a daily basis to the discrimination and humiliation which had been the lot of so many of our ancestors.”

There were of course also many who were not White who collaborated and to some extent benefited from the apartheid state. Their role and responsibility for the past has not been adequately addressed and the ease with which many of them seamlessly moved into the spaces of a democratic society without any accountability remains another unexplored area . Somehow there remains an ongoing belief , largely supported by the material consequences on the ground , that those who supported and benefited from the apartheid State continue to be advantaged as opposed to those who fought it or were it’s victims.

5. How did our unique approach set the template for the future?

The TRC was never intended to be the beginning and the end of how we would deal with the past. That it has largely become so is not the fault of the TRC but the failure of South Africa to engage beyond where the TRC left off. However much of how the present unfolds continues to be shaped by the template that emerged from the TRC’s attempt to get South Africa to deal with its past.

The legal and definitional limitations and the limited audience of the TRC would prove to have far reaching consequences in our ongoing efforts at reconciliation, restitution and redistribution. At this stage perhaps it is worth mentioning that the TRC faced its own legal constraints. It was a creature of statute and thus its powers, scope and ambit was limited by the letter of the law and there was the real risk that it could have faced a legal challenge of acting *ultra vires* had it sought to go beyond its legal mandate in the construction of its brief. On the other hand it is certainly arguable that the very nature of what it was required to do warranted the widest and most expansive interpretation of its

mandate and that its failure to do so was in part its own doing and not one necessarily foisted upon it by law. Be that as it may those consequences were far reaching.

Even though it is now settled that no one can claim ignorance about what happened during apartheid as a result of the extensive public hearings held by the TRC, the limited focus of its work painted a substantially incomplete picture of in particular the socio-economic devastation caused by apartheid and the manner in which the political, economic and social systems conspired together to advance the cause of White interests to the detriment and prejudice of Black interests.

The consequence of this was that it was perhaps at one level difficult but another convenient for the beneficiaries of apartheid not to locate themselves in that broader canvass of how the system operated. If denial and ignorance was a common response during apartheid, the TRC era and the period beyond it simply did not succeed in getting all of South Africa, perpetrators and victims, beneficiaries and those who were prejudiced to form a collective consciousness about what happened and more importantly what was required to address it in the form of reparation, restitution and redistribution.

This collective consciousness or knowledge was vital if we were to proceed successfully with the “reconstruction of society”. As much as the Constitution was widely regarded as progressive and transformative, it was equally evident that much of what was required could not happen simply as a consequence of some legal injunction. The ability of a new society to deal with the historical neglect of culture, languages and religion, the necessity to advance economic transformation, equity in the workplace, a just land ownership and redistribution process, the accurate and more balanced re-writing of history, the changes of names, places etc were all to be part of this dynamic process of change, of transformation of righting the wrongs of the past. Its success or otherwise would be premised on whether the South African collective saw the need for this having regard to our past or whether it was seen from quite different perspectives by White and Black South Africans. Sadly that common consciousness has not taken root and much of what

has happened has been bitterly contested and rather than uniting a diverse nation, has resulted in suspicion and distrust.

Change, particularly of the radical and far reaching kind that occurred in the early 1990's in South Africa, brings with it anxiety and insecurity. Under these circumstances the loss of political power and positions of privilege may well prompt and activate conduct designed to hold on to what is left. This may well have culminated in resistance as the demands of transformation came into conflict with what many perceived as the legitimate outcome of their own endeavours, even during an era of deep seated inequality of opportunity. The absence of meaningful engagement between ordinary citizens about their own roles in the past whether as active participants or passive recipients of the largesse of state policy again militated against any acceptance of an agreed agenda for social change.

Former President Mbeki speaking at a Racism Conference convened by the HRC in 2000 said that “[i]f white South Africa is fearful of the future because of what it might lose, black South Africa looks forward to the future because of what it will gain.”¹⁹ If this is correct, have these fears and expectations shaped much of what has happened or stood in the way of what should have happened?

There have been court actions about the names of cities and towns. Land redistribution has proceeded at snails pace, in part due to inefficiencies in the administration but also largely exacerbated by the resistance of landowners and the desire to exact maximum compensation for land that was in many instances acquired as a result of historical inequities. Employment equity has also not achieved the outcomes that were set and the various processes have been characterized by fear and distrust. Thus even as we collectively proclaim and celebrate our Constitution, we still have fundamental disagreement on how we are to achieve the reconstruction of our society.

¹⁹ Thabo Mbeki, opening speech at the National Conference on Racism, Johannesburg, 30 August 2000, reprinted in ANC daily news briefing, 31 August 2000, available at <http://70.84.171.10/~etools/newsbrief/2000/news0831.txt> (accessed 24 March 2009).

Important processes such as reconciliation have different meanings assigned to them. For some reconciliation is about saying sorry for disappearances, murder and torture (which it is argued that many perpetrators did when appearing before the TRC). In contrast, for those who were deprived of an equal opportunity by the apartheid system it is inconceivable to conceive of any model of reconciliation that does not encompass the advancement of social justice or some commitment to transformation and redistribution.

Dealing effectively with our past would certainly not on its own have resulted in us achieving a just and equal society. However, it would have ensured, to the best extent possible, that there was a common commitment to what was required. Indeed, there have been some initiatives to involve beneficiaries of apartheid in a process beyond the TRC. The “Home for All Campaign” was one such initiative. It sought to encourage Whites to become involved in voluntary processes including establishing a fund to contribute to the reconstruction of society.²⁰ The initiative did not garner any level of significant support and not much came of it despite the good intentions of those who initiated it. Notwithstanding what has been a remarkable transition devoid of the desire for retribution and revenge; a transition that could have been much more exacting and demanding from those who benefited from apartheid; a transition that could have insisted on the basic human rights principles of accountability and redress with the consequences that go with it, we have difficulty in convincing people to simply become part of voluntary processes that represent an insignificant *quid pro quo* to the generosity of so many victims of the past.

We cannot and should never minimize what happened during the darkest years of apartheid. It was not a well intentioned social experiment that went wrong nor was it a genuine attempt to protect the cultural and religious identity of a diverse society. It was simply a system based on a hierarchy of humanity and implemented with uncompromising rigidity that exacted a terrible price and requires a response that is not only compassionate and empathetic but one that recognizes the inherent injustice of the

²⁰ “‘Home for All’ campaign launched” *SAPA* 16 December 2000, available at http://www.news24.com/News24/South_Africa/0,,2-7_955546,00.html (accessed 24 March 2009).

system with a commitment by those responsible to address its consequences. That commitment continues to be lacking and how we have constructed the Memory Project is obviously a matter that requires serious revisiting.

6. Conclusion

In this the 15th year of our democracy we will critically reflect on and debate the success or otherwise of the turbulent journey we have had. Global reality in 1994, the year our young democracy came into being, was characterized by bewildering contrasts and contradictions best described in a UNDP Report published that year in the following terms:²¹

“It is essential ... to step back a little and to assess the state of affairs in the 50 years since the United Nations was created. What emerges is an arresting picture of unprecedented human progress and unspeakable human misery, of humanity’s advance on several fronts mixed with humanity’s retreat on several others, of a breathtaking globalization of prosperity side by side with a depressing globalization of poverty.”

The South Africa of 2009 mirrors those contrasts in very substantial ways which stand in direct contradiction to both the vision and the imperatives of our Constitution. From 1997 to 2007 income inequality in South Africa increased.²² The rich got richer and the poor got poorer. While many Whites who prospered under apartheid continue to prosper today, black economic empowerment and new opportunities has created enormous wealth for some while the effects and the benefit of economic growth has not significantly impacted on the lives of millions . From a human rights perspective the idea of equal human rights for all still remain illusive . There is much to suggest that we have not internalized an ethos of human rights and ongoing racism including racial violence , gender based violence , homophobic violence and xenophobic violence suggest that we battle to deal with difference and the constitutional imperative of being ‘united in our diversity’

²¹ UNDP *Human Development Report 1994* 1.

²² South African Institute of Race Relations, press release, 27 November 2008, http://www.sairr.org.za/press-office/archive/press_release_-_inequality_27_11_2008.pdf (accessed 26 March 2008).

remains a slogan in many respects. There is a growing culture of demand and the threat of violence or ungovernability should the demand not be met . At the international level we appear to have relegated our rights commitments and elevated trade , economics and political solidarity above the demands of human solidarity. While the South Africa of 2009 is immeasurably different from the society we repudiated in 1994 , there remains simply too much in both it's architecture and it's outward manifestation that remind us what we need to become .

As we prepare to participate in our fourth democratic elections we will continue to ponder what has gone wrong and where have we gone wrong – if of course we are in agreement that we are not on a path in synergy with the ideal of a society committed to social justice and the development of the full potential of each person. In this process any attempt to understand the present and the considerable fault lines that exist must have appreciation for the way in which we dealt with our past.

A useful starting point may well be to commence the dialogue that many believe has already been concluded – that between ordinary South Africans – shaped by an attempt to ensure as complete and accurate an understanding of how apartheid permeated all aspects of our lives, how it created benefit and prejudice outside of the intention of those benefited and prejudiced, what the consequence of such policies have been for ordinary South Africans and what commitment they are willing to make as individuals and as collectives to address the ongoing inequities created.

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